

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE: TRANSDATA, INC. SMART )  
METERS PATENT LITIGATION, ) Case Number 12-mi-2309-C

**MEMORANDUM OPINION AND ORDER**

Transdata has filed a motion requesting the Court adopt a new Rule from the Eastern District of Texas which has the purpose of focusing patent claims and prior art references. Defendants object to Plaintiff's request, arguing that the limitations created by the Rule would be unduly burdensome to them and at this late stage of discovery in the case would impose an undue hardship. Defendants agree that the Rule may have some benefits if adopted early in the case; however, given the late stage of case preparation in this matter, Defendants argue any benefit here would be de minimus. After considering the parties' briefs, the attached exhibits, and review of the Rule, the Court finds adoption of a modified version is appropriate.

As Plaintiff notes, by minimizing Plaintiff's asserted claims per patent, and Defendants' prior art references, the parties will be forced to focus their efforts on preparing the best possible case for trial, rather than approaching the conclusion of discovery and trial with a "kitchen sink" approach. However, given the breadth of the claims at issue in this case, the Court finds a modification to the number of asserted claims and prior art references is appropriate. To that end, the Court finds that Plaintiff must select no more than twelve asserted claims per patent, while Defendants are limited to twenty prior art references per patent. The Court notes that, consistent with the Rule, a prior art instrumentality, such as a device or process, and associated references that describe that instrumentality, shall count as

one reference, as shall the closely related work of a single prior artist. There shall be a further narrowing of the parties' positions prior to opening expert report and dispositive motion deadlines. At that time, Plaintiff may select no more than six asserted claims per patent, and Defendants may assert no more than fourteen prior art references or combinations of references. Plaintiff's preliminary election of asserted claims shall be presented to Defendants within ten days of the date of this Order; Defendants shall provide their asserted prior art fourteen days after Plaintiff's service. Not later than April 2, 2014, Plaintiff will serve its final election of asserted claims, and Defendants will serve their final election of asserted prior art not later than April 30, 2014.

As set forth more fully herein, Transdata, Inc.'s Motion to Amend the Scheduling Order to Adopt the Eastern District of Texas General Order Focusing Patent Claims and Prior Art to Reduce Costs (Dkt. No. 264) is GRANTED IN PART.

IT IS SO ORDERED this 29th day of January, 2014.

  
ROBIN J. CAUTHRON  
United States District Judge